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On 7/9/04

TOWNSEND and TOWNSEND and CREW LLP

By: *Bamela Seltzer*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Kang P. Lee, et al.

Application No.: 10/034,444

Filed: December 21, 2001

For: Aerogel Powder Therapeutic Agents

Examiner: M. Haghighatian

Art Unit: 1616

DECLARATION OF GEORGE L. GOULD,  
Ph.D.

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, George L. Gould, Ph.D., do declare as follows:

1. I am the Director of Research and Development at Aspen Aerogels, Inc. and co-inventor of the instant application. I was also Manager of the Polymer and Composites Division of Aspen Systems, Inc. from June 1999 to June 2002. Aspen Aerogels, Inc. was founded on May 4, 2001 and is the assignee of record in the instant patent application (serial number 10/034,444). I have a doctorate degree in

Chemistry, but am unfamiliar with the particulars of the patent application process. A copy of my Curriculum Vitae is attached as Exhibit A.

2. In July 2003, Kang P. Lee, Chief Technology Officer of Aspen Aerogels, Inc. gave me a copy of a letter dated July 3, 2003 from Bruce Jacobs, the patent attorney in charge of prosecuting the instant application. The copy included an Office Action mailed June 30, 2003 that contained a "final" rejection from the Examiner in the instant application.

3. I noted that Mr. Jacobs' letter only identified August 30, 2003 as a deadline for comments to assist him with the preparation of a response. I believed that the possibility of a response meant that prosecution of the application had not ended. At the time I received the letter, I was not familiar with the particular prosecution deadlines in the instant application. Thus I was not aware of the three month shortened statutory period for reply (ending on September 30, 2003) or the final deadline for reply (on December 30, 2003), both of which were set by the Office Action mailed June 30, 2003. I only learned of these dates after I learned that the instant application was abandoned (see paragraph 7 below).

4. Upon review of the Office Action, it was evident to me that my comments incorporated into the Response filed April 28, 2003 to the previous non-final Office Action mailed November 18, 2002 were not clearly understood or appreciated by the Patent Examiner. I recall a telephonic conversation with Mr. Jacobs in either July 2003 or August 2003 in which I expressed frustration that the previous Response was not clearly understood and that another Response was needed. I am certain that I did not leave Mr. Jacobs with the impression that I gave up or wanted to end prosecution of the instant application. My intent was to study the problem in more detail and provide clearer, more definitive, and more persuasive arguments for responding to the "final" rejection.

5. I know that from June 1999 to April 19, 2004, Aspen Systems, Inc. did not have any in-house patent attorney or patent agent. I know that Aspen Systems, Inc. and Aspen Aerogels, Inc. maintained no internal docketing system of patent

application deadlines from April 19, 2004 to the present day. I know that it was our policy to rely solely upon the outside patent attorney, such as Mr. Jacobs, handling our patent applications to docket all deadlines and to alert us of upcoming deadlines. Indeed, it was my previous experience that in cases where a deadline was approaching, the outside patent attorney would send us reminders. On previous occasions, Mr. Jacobs had contacted me directly with reminders via e-mail and by telephone to remind me of impending deadlines for action. This has always served as a catalyst for action on my part, in that I am frequently focused on a great many non-patent issues at any given time. I had no intention to abandon the instant patent application because I disagree strongly with the Patent Examiner's position and believe that our application has merit. I have also represented to others our company's belief that aerogel inhalant technology is something we intend to secure patent protection for.

6. I do not recall any reminder or any other communication concerning the instant application from Mr. Jacobs after my telephonic discussion with him. My ongoing understanding with Mr. Jacobs was that in the absence of a response from me, he was to err on the side of caution and not allow any application to expire or be abandoned.

7. On May 19, 2004, I was disappointed to learn from our Intellectual Property Manager, Dr. Poongunran Muthukumaran (who started at Aspen Aerogels, Inc. on April 19, 2004) that the instant application had been abandoned on the basis of a failure to respond to the Office Action mailed June 30, 2003. I felt badly that this had occurred because we expended considerable efforts to respond to the previous rejection with persuasive arguments. Also, I was surprised that I had not received the customary warnings from Mr. Jacobs concerning the deadlines.

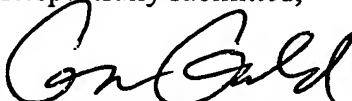
8. After May 19, 2004, I checked for, and failed to locate, any communication from Mr. Jacobs after our telephonic discussion to remind me of a deadline in the instant application. In the absence of any such reminder, I had treated the application as still pending.

9. After May 19, 2004, I learned from Dr. Muthukumaran that a Cheryl Middleton of Mr. Jacobs' office "confirmed" abandonment of the instant application on January 30, 2004 during a telephonic interview with Examiner. I do not know why Ms. Middleton would have done such a thing. I had not communicated any instructions regarding "abandonment" to Mr. Jacobs, and I do not recall ever talking with Ms. Middleton.

10. Based on the entirety of the foregoing, I believe that the failure to respond to the Office Action mailed June 30, 2003 was unintentional. Indeed, the failure was, and is, contrary to my intention to respond to the "final" rejection.

11. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the instant application or any patent issuing thereon.

Respectfully submitted,



George L. Gould, Ph.D.

# GEORGE L. GOULD

**Current Position:** Director of Research and Development at Aspen Aerogels, Incorporated. Principal Investigator and Program Manager for six government contracts totaling \$4M (5 currently ongoing) and aerogel materials IR&D programs.

**Address:** 188 Cedar Hill Street.  
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**Research Fields:** Aerogel formulation and manufacturing process development. Structural, kinetic, and thermodynamic studies of novel polymeric materials and inorganic/organic hybrid material blends. Synthetic, mechanistic and theoretical studies of transformations related to problems in homogeneous catalysis and materials science.

**Education:** Postdoctoral Research with Dr. Mark A. Andrews (Brookhaven National Laboratory (1989-1992)). Ph. D. in Inorganic Chemistry (1989) with Dr. D. Michael Heinekey, Yale University. B.A. in Chemistry (1984), Thesis and Departmental Honors, The College of Wooster, Wooster, Ohio.

## Professional Societies

American Chemical Society (ACS), Division of Polymeric Materials: Science and Engineering. Elected to Sigma Xi in 1984.

## Selected Publications

Louis A. Trevino, Roxana Trifu, George L. Gould, Evelyn S. Orndoff, Henry H. Tang, "Aerogel Composite Insulation for Advanced Space Suit", *Proceedings of the 32<sup>nd</sup> International Conference on Environmental Systems*, 2002, 2002-01-2316.

Christopher J. Stepanian, George L. Gould, and Redouane Begag, "Aerogel Composite with Fibrous Batting" US patent (serial number 10/034,296) and PCT applications submitted to the United States Patent Office (12/01).

Kang P. Lee and George L. Gould, "Aerogel Powder Therapeutic Agents" US patent (serial number 10/034,444) and PCT applications submitted to the United States Patent Office (12/01).

George L. Gould and Roxana Trifu, *Polyhalofluoroacetylenes*, "Methods of Preparing Same, and Uses of Same" patent application submitted to the United States Patent Office (3/99); Serial Number P97,2055.

Roxana Trifu and George L. Gould. "Trimethyl(trifluorovinyl)silane." *Molecules* 2000, 5, M169.

George L. Gould, Veena Eswara, Roxana M. Trifu and David G. Castner. "Polydifluoroacetylene, Polychlorofluoroacetylene, and Polydichloroacetylene." *J. Am. Chem. Soc.* 1999, 121, 3781-3782.

George L. Gould, Veena Eswara, Roxana M. Trifu and David G. Castner. "New Polymeric Materials Derived from Difluoroacetylene, Chlorofluoroacetylene, and Dichloroacetylene." *Polym. Mater. Sci. Eng., ACS PMSE Preprints*, **1999**, *80*, 205-206

George L. Gould, Veena Eswara, and Roxana M. Trifu. "Polydichloroacetylene: Synthesis and Characterization." *Polym. Mater. Sci. Eng., ACS PMSE Preprints*, **1999**, *80*, 207-208

Robert M. Moriarty\*, Livia A. Enache, Richard Gilardi, George L. Gould\*, and Donald J. Wink. "Michael Addition to  $\alpha,\beta$ -Unsaturated Arene Ruthenium(II) Cyclopentadiene Complexes. *Endo Nucleophilic Addition*" *J. Chem. Soc. Chem. Commun.* **1998**, 1155-1156.

George L. Gould, Mark Andrews and Eric J. Voss, "Evidence for Platinum(II) Oxo Intermediates in Reactions of Bis(phosphine) Platinum(II) Carbonate Complexes." *Inorg. Chem.* **1996**, *35*, 5740-5742.

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Mark A. Andrews and George L. Gould, *Carbohydrate Research* **1992**, *229*, 141-147.  
"Transacetalization: A Convenient, Non-Aqueous Method for Effecting the Deprotection of Sugar Isopropylidene and Benzylidene Derivatives."

Mark A. Andrews and George L. Gould, *Organometallics* **1991**, *10*, 387-389.  
"Photo-Induced Net [2+2+2] Cycloreversion of Platinum(II) Glycolate Complexes: A New Approach to the Generation of Reduced, Coordinatively Unsaturated Metal Species and the Activation of Carbohydrate Carbon-Carbon Single Bonds."

D. Michael Heinekey and George L. Gould, *Organometallics* **1991**, *10*, 2977-2979.  
"Synthesis and Reactivity of Rhenocene Derivatives"

George L. Gould, *J. Am. Chem. Soc.*, **1991**, *113*, 8196. "Mechanisms of Inorganic and Organometallic Reactions." Volume 6, Book Review.

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Mark A. Andrews, George L. Gould, and Steven A. Klaeren, *J. Org. Chem.* **1989**, *54*, 5257-5264, "Decarbonylation of Unprotected Aldose Sugars by Chlorotris(triphenylphosphine)rhodium(I). A New Descent of Series Approach to Alditols, Deoxyalditols, and Glycosylalditols."